

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JODI C. MAHDAVI,

Plaintiff,

v.

NEXTGEAR CAPITAL, INC., *et al.*,

Defendants.

Case No.: 1:14-cv-00648-TSE-TCB

MOTION FOR LEAVE TO FILE CROSS-CLAIM

COMES NOW Defendant P.A.R. Services, Inc. ("PAR"), by undersigned counsel, pursuant to Fed. R. Civ. P. 13, and hereby requests that this Court enter an order granting PAR leave to file a cross-claim against Defendant NextGear Capital, Inc. In support thereof, PAR respectfully invites this Court's attention to the attached Memorandum of Points and Authorities.

Defendant NextGear Capital, Inc. consents to the relief requested herein.

Dated: October 31, 2014.

Respectfully submitted,

P.A.R. SERVICES, INC.,

By counsel:

/s/ James N. Markels

James N. Markels (VA Bar No. 68399)

JACKSON & CAMPBELL, P.C.

1120 20th Street, N.W.

South Tower, Third Floor

Washington, D.C. 20036-3437

Phone: (202) 457-1600

Facsimile: (202) 457-1678

Email: jmarkels@jackscamp.com

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF System, which will then send a notification of such filing (NEF) to:

Jonathan E. Levine, Esquire (VA Bar No. 45572)
LEVINE, DANIELS & ALLNUTT, PLLC
5311 Lee Highway
Arlington, Virginia 22207
Telephone: (703) 525-2668
Facsimile: (703) 525-8393
jonathan.levine@levinedaniels.com
Counsel for Plaintiff Jodi C. Mahdavi

James D. Bragdon, Esquire
GALLAGHER, EVELIUS & JONES, LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 727-7702
Facsimile: (410) 468-2786
jbragdon@gejlaw.com
Counsel for Defendant NextGear Capital, Inc.

/s/ James N. Markels
James N. Markels (VA Bar No. 68399)
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W.
South Tower, Third Floor
Washington, D.C. 20036-3437
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Email: jmarkels@jackscamp.com
Counsel for Defendant P.A.R. Services, Inc.

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Defendants.

Case No.: 1:14-cv-00648-TSE-TCB

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE CROSS-CLAIM**

COMES NOW Defendant P.A.R. Services, Inc. (“PAR”), by undersigned counsel, pursuant to Fed. R. Civ. P. 13, and hereby requests that this Court enter an order granting PAR leave to file a cross-claim against Defendant NextGear Capital, Inc. (“NextGear”). In support thereof, PAR states as follows:

1. This case concerns Plaintiff’s claim that her BMW was wrongfully repossessed by NextGear.
2. NextGear engaged PAR to conduct the actual repossession of the BMW.
3. NextGear and PAR have a substantial history of doing business with each other, in which NextGear has retained PAR to repossess other vehicles. In most cases, there was a written contract between the parties concerning each particular repossession. That written contract normally contained language indemnifying PAR from any liability that it may incur as a result of any repossession it conducts at NextGear’s direction.
4. In this case, PAR has been so far unable to locate the written contract for the repossession of the BMW at issue in this case.

5. PAR has repeatedly requested that NextGear produce the written indemnification contract, but to date NextGear has not done so.
6. Although PAR issued written discovery to NextGear on August 29, 2014, seeking the written indemnification contract, NextGear to date has yet to provide any responses to that discovery.
7. To protect its rights, PAR now seeks leave to file a cross-claim against NextGear for indemnification. A copy of the lodged Cross-Claim is attached hereto as **Exhibit One**.
8. Under Fed. R. Civ. P. 13(g), a cross-claim is permitted “if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.”
9. There is no specific time limit as to when a party can present a cross-claim—the issue is left to this Court as a matter of judicial discretion. *See* Charles Allan Wright, *et al.*, 6 Fed. Prac. & Proc. Civ. §1431 (3d ed.).
10. It would be prejudicial to PAR if it were not allowed to bring its cross-claim for indemnification. NextGear has had notice of PAR’s claim, and consents to the relief sought in this motion.
11. Accordingly, PAR requests that this Motion be granted.

WHEREFORE, Defendant P.A.R. Services, Inc. respectfully requests that this Court grant this Motion and accept for filing the lodged Cross-Claim by Defendant P.A.R. Services,

Inc. against Cross-Defendant NextGear Capital, Inc., along with any other relief this Court deems just and necessary.

Dated: October 31, 2014.

Respectfully submitted,

P.A.R. SERVICES, INC.,

By counsel:

/s/ James N. Markels

James N. Markels (VA Bar No. 68399)

JACKSON & CAMPBELL, P.C.

1120 20th Street, N.W.

South Tower, Third Floor

Washington, D.C. 20036-3437

Phone: (202) 457-1600

Facsimile: (202) 457-1678

Email: jmarkels@jackscamp.com

EXHIBIT ONE

**IN THE UNITED STATES DISTRICT COURT
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Defendants.

Case No.: 1:14-cv-00648-TSE-TCB

P.A.R. SERVICES, INC.,

Cross-Plaintiff,

v.

NEXTGEAR CAPITAL, INC.,

Cross-Defendant.

P.A.R. SERVICES, INC.'S CROSS-CLAIM AGAINST NEXTGEAR CAPITAL, INC.

COMES NOW Defendant/Cross-Plaintiff P.A.R. Services, Inc. ("PAR"), by undersigned counsel, pursuant to Fed. R. Civ. P. 13, and hereby submits its Cross-Claim as against Cross-Defendant NextGear Capital, Inc. ("NextGear"), and in support thereof states as follows:

PARTIES, JURISDICTION AND VENUE

1. PAR is a corporation formed under the laws of the State of Maryland with its principal offices in Maryland.
2. NextGear is a corporation formed under the laws of the State of Delaware.
3. This Court has supplemental jurisdiction over this Cross-Claim under 28 U.S.C. §1367.

FACTS

4. On information and belief, PAR and NextGear entered into an oral, written, or implied agreement in which PAR agreed to provide services to NextGear related to the repossession of property, and NextGear, in turn, agreed to indemnify PAR for any liability that may accrue under PAR's provision of those services (the "Agreement").
5. Under the Agreement, NextGear did request that PAR repossess a 2013 BMW 650i Gran Coupe with a vehicle identification number of WBA6B4C53DD097953 (the "BMW") from the premises located at 915 Fairway Drive, Vienna, Virginia 22180.
6. Pursuant to NextGear's express instructions, PAR did repossess that BMW from Plaintiff's Property on or about May 20, 2014.
7. On or about May 29, 2014, Jodi C. Mahdavi filed a Complaint in the Circuit Court for the County of Fairfax, Virginia, against NextGear and PAR, alleging, *inter alia*, that NextGear and PAR wrongfully repossessed the BMW, and should therefore be liable for certain damages.
8. Ms. Mahdavi's Complaint has since been removed to this Court as the above-captioned matter.

COUNT I – INDEMNIFICATION

9. PAR hereby reincorporates its allegations in Paragraphs 1 through 8 above as though fully set forth herein.
10. Under the express or implied terms of the Agreement, NextGear agreed to indemnify PAR for any liability that may be found against it as a result of Plaintiff's claims.
11. PAR is accordingly entitled to indemnification from NextGear for the full amount of any judgment awarded to Plaintiff as against PAR, plus attorneys' fees and costs.

COUNT II – EQUITABLE INDEMNIFICATION

12. PAR hereby reincorporates its answers to Paragraphs 1 through 11 above as though fully set forth herein.
13. PAR repossessed the BMW on express instructions by NextGear.
14. If it is determined that NextGear did not have legal authority to repossess the BMW, that would be the result of negligence or fault by NextGear, not PAR.
15. If PAR is found to be liable to the Plaintiff, it will only be due to the fault of NextGear in properly determining whether it had the right to repossess the BMW.
16. PAR is equitably entitled to be indemnified by NextGear for its negligence or fault, if any, in instructing PAR to repossess the BMW.

WHEREFORE, Cross-Plaintiff P.A.R. Services, Inc. respectfully requests that in the event the Plaintiff is awarded any relief as against P.A.R. Services, Inc., that judgment also be entered in favor of P.A.R. Services, Inc. as against NextGear Capital, Inc. for the full amount of any such liability, plus reasonable attorneys' fees and costs, along with such other relief as this Court deems just and necessary.

Respectfully submitted,

P.A.R. SERVICES, INC.,
By counsel:

/s/ James N. Markels

James N. Markels (VA Bar No. 68399)
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W.
South Tower, Third Floor
Washington, D.C. 20036-3437
Phone: (202) 457-1600
Facsimile: (202) 457-1678
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LEVINE, DANIELS & ALLNUTT, PLLC
5311 Lee Highway
Arlington, Virginia 22207
Telephone: (703) 525-2668
Facsimile: (703) 525-8393
jonathan.levine@levinedaniels.com
Counsel for Plaintiff Jodi C. Mahdavi

James D. Bragdon, Esquire
GALLAGHER, EVELIUS & JONES, LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 727-7702
Facsimile: (410) 468-2786
jbragdon@gejlaw.com
Counsel for Defendant NextGear Capital, Inc.

/s/ James N. Markels
James N. Markels (VA Bar No. 68399)
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W.
South Tower, Third Floor
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Phone: (202) 457-1600
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Email: jmarkels@jackscamp.com
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**ORDER GRANTING
“MOTION FOR LEAVE TO FILE CROSS-CLAIM”**

UPON CONSIDERATION of Defendant P.A.R. Services, Inc.’s Motion for Leave to File Cross-Claim, and

IT APPEARING that the Motion should be granted, it is hereby

ORDERED, that the Motion for Leave to File Cross-Claim be, and hereby is, **GRANTED**; and it is hereby

ORDERED, that the lodged Cross-Claim attached as Exhibit One to the Motion be admitted by the Clerk of this Court as though filed by Defendant P.A.R. Services, Inc. on the date of this Order.

By my hand this ____ day of _____, 2014.

Senior Judge T.S. Ellis, III

Copies to:

James N. Markels, Esquire
Counsel for Defendant P.A.R. Services, Inc.

James D. Bragdon, Esquire
Counsel for Defendant NextGear Capital, Inc.

Jonathan E. Levine, Esquire
Counsel for Plaintiff